



legitimate, nondiscriminatory reason for terminating the plaintiff's employment and, thus, moves for a summary judgment.

Based on the evidence contained in the record, the Court is of the opinion that the plaintiff and the defendant have tendered conflicting summary judgment evidence. Without commenting on the strength or credibility of the evidence presented, the Court determines that the parties have, at the very least, raised genuine issues of material fact concerning, *inter alia*, whether the plaintiff was subjected to an adverse employment action on account of any disability, whether the defendant's proffered non-discriminatory reason for terminating the plaintiff was pretextual, and/or whether the defendant engaged in a good faith interactive process to devise a reasonable accommodation for the plaintiff on account of her purported disability.

Given the demanding strictures applicable in the summary judgment context requiring this Court to resolve all factual disputes in favor of the non-moving party, this case presents a swearing-match which must be resolved by a jury, not by a judge on summary judgment. *See E.E.O.C. v. R.J. Gallagher Co.*, 181 F.3d 645, 652 (5th Cir. 1999) ("This is a swearing match-a factual dispute which must be resolved by the ultimate fact finder, not by the judge on summary judgment."). Accordingly, a summary judgment is inappropriate under the circumstances and the defendant's motion is hereby **DENIED**.

It is so **ORDERED**.

SIGNED on this 18<sup>th</sup> day of December, 2019.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt  
United States District Judge